IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

WP(C).No. 23130 of 2007(C)

PETITIONER:

R.SURESH, MANAGER,
EXCISE DIVISION OFFICE,
KOLLAM.

BY ADV. SRI.N.SUGATHAN
SMT.VARSHA BHASKAR
SRI.S.PRASANTH (AYYAPPANKAVU)

RESPONDENTS:
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1. **THE STATE OF KERALA, REPRESENTED BY**
   THE SECRETARY TO GOVERNMENT,
   TAXES DEPARTMENT, SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **THE EXCISE COMMISSIONER,**
   COMMISSIONERATE OF EXCISE,
   THIRUVANANTHAPURAM.

3. **K.V.LALKUMAR**
   CIRCLE INSPECTOR OF EXCISE,
   EXCISE ENFORCEMENT & ANTI-NARCOTIC SPECIAL SQUAD.
   KOLLAM.

4. **P.K.SANU,**
   EXCISE INSPECTOR (ON PROMOTION AS CIRCLE
   INSPECTOR OF EXCISE)
   EXCISE CIRCLE OFFICE,KARUNAGAPPALLY.

BY GOVERNMENT PLEADER SRI. BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/08/2007 ALONG WITH WPC NO. 24011 OF 2007 AND COC.NO.1198 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.23130/2007 C

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF MEDICAL CERTIFICATE DTD. 1/10/2004.

EXT.P2: COPY OF REPRESENTATION DTD. 5/01/2005 TO THE 2ND RESPONDENT.

EXT.P3: COPY OF ORDER NO.XD2-30555/04 DTD. 25/08/2006 OF THE 2ND RESPONDENT.

EXT.P4: COPY OF ORDER NO.XD2-19290/2007 DTD. 26/07/2007 OF THE 2ND RESPONDENT.

/TRUE COPY/

P.S.TO JUDGE

KSS

Antony Dominic, J.

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W.P(C).No.23130/07 & 24011/07

&

Con.Case (C) No.1198 of 2007

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Dated this the 18th day of August, 2007.

JUDGMENT

Writ Petitioners are Circle Inspectors of Excise and are challenging orders transferring them. Petitioner in W.P.(C) No.23130 of 2007, was posted as Manager, at the Excise Divisional Office, Kollam since 12.11.2004 and was undergoing Board service, a qualification prescribed for further promotion to the post of Assistant Commissioner of Excise. He was undergoing treatment for cardiac arrest and Ext.P1 medical certificate has been produced in support thereof. It is also stated that though he was transferred on an earlier occasion, on a request made by him on compassionate grounds, the said order was cancelled and he was permitted to continue at Kollam.

2. While so, by Ext.P4 order dated 26.7.2007, he was transferred and posted to Excise Divisional Office, Alappuzha. By the said order, the third respondent, who is also a Circle

Inspector of Excise, was posted at the Narcotic Cell, Kollam was posted in his place. Simultaneously, fourth respondent, who was working as Excise Inspector, Karunagappally was promoted and posted at the Narcotic Cell, in the post vacated by the third respondent.

3. It is challenging Ext.P4 that this Writ Petition was filed mainly contending that it was only to accommodate the fourth respondent, who is the General Secretary of Kerala State Excise Officers Association (hereinafter referred to the Officers Association) that he was transferred and that if at all the third respondent was to be shifted from the Narcotic Cell, he should have been posted at Alappuzha in the post to which the petitioner has been transferred and posted. It is on this contention that this Writ Petition has been filed.

4. At the time when the Writ Petition came up for admission on 30.7.2007, this Court passed an interim order as follows:

> "Admit. Issue notice.
>
> Prima facie, I find no justification for displacing the petitioner by posting the 3rd respondent, in order

> that the 4th respondent who is a fresh promotee can be accommodated at Kollam. So, the petitioner shall be retained at Kollam, for a period of two months from today. The respondents may file counter affidavit and move for vacating the interim order".

On the basis of the interim order, petitioner was retained in the Excise Divisional Office, Kollam.

5. Subsequently order dated 31.7.2007 was issued (Ext.P3 in W.P.(C) No.24011 of 2007). This order says that in view of the interim order passed by this Court on 30.7.2007 in W.P.(C) No.23130 of 2007, the order dated 26.7.2007 was modified and that the petitioner in the earlier Writ Petition is retained as Manager, Excise Divisional Office, Kollam and that the third respondent who was transferred by order dated 26.7.2007 and posted at the Divisional Office, Kollam, was transferred and posted as Manager, Excise Divisional Office, Alappuzha. The order further provides that the fourth respondent is posted at the Divisional Office, Kollam. It is challenging the order dated 31.7.2007 produced as Ext.P3, W.P.(C) No.24011 of 2007 is filed by the third respondent in W.P.(C) No.23130 of 2007. On a prima facie finding that the order of transfer dated 31.7.2007,

was issued only for honouring the order dated 30.7.2007 in W.P. (C) No.23130 of 2007, this Court passed an interim order in the latter case directing that the third respondent should be retained at the Excise Divisional Office, Kollam. Against that interim order, though a Writ Appeal was filed before the Division Bench, the appeal was dismissed by judgment dated 9.9.2007.

6. In spite of the dismissal of the Writ Appeal, according to the petitioner in W.P.(C) No.24011 of 2007, the interim order has not been complied with till date and therefore Con. Case © No.1198 of 2007 has been for taking action against the respondent therein for disobedience of the interim order. In the meanwhile, fourth respondent in W.P.(C) No.23130 of 2007, who is also fourth respondent in W.P.(C)No.24011 of 2007, filed his counter affidavit and sought an early hearing of the Writ Petitions and the learned Government Pleader had filed a statement in W.P.(C) No.24001 of 2007. The Writ Petitions were taken up for hearing and the Contempt Case was also taken along with the Writ Petitions and all these cases were heard together.

7. As far as W.P.(C) No.23130 of 2007 is concerned, the petitioner was working as Manager, Excise Divisional Office,

Kollam and was transferred to Excise Divisional Office, Alappuzha. In his place the third respondent was posted by order dated 26.7.2007 (Ext.P4). As already noted at the time of admission of the Writ Petition, this Court had passed an interim order to the effect that prima facie there was no justification for transferring the petitioner to accommodate a newly promoted Circle Inspector of Excise. In pursuance to that order the respondents have issued the order dated 30.7.2007 (Ext.P3 in W.P.(C) No.24011 of 2007) wherein it is stated that the order dated 26.7.2007 is modified and the petitioner in W.P.(C) No.23130 of 2007 is retained as Manager, Excise Divisional Office, Kollam. Since the order dated 26.7.2007 challenged by him in Writ Petition No.23130 of 2007 has been modified by the subsequent order dated 31.7.2007, he has no surviving grievance now. Although this order is challenged in W.P.(C) No.24011 of 2007, the petitioner therein is not objecting to the retention of the petitioner herein at Kollam but is complaining about his transfer to Alappuzha. Therefore, further examination of his contention is not warranted.

8. What remains to be considered is the challenge raised by

the petitioner in W.P.(C) No.24011 of 2007 against the order dated 31.7.2007, produced as Ext.P3. He has been working in the Narcotic Cell, Kollam, since 13.12.2006 and was transferred as Manager, Excise Divisional Office, Kollam by order dated 26.7.2007. It was in modification of that order that the order dated 31.7.2007 (Ext.P3 in W.P.(C) No.24011 of 2007) was issued transferring and posting him as Manager, Excise Divisional Office, Alappuzha.

9. While examining the challenge to an order of transfer, I should bear in mind the law laid down by the Supreme Court in the case reported in **State of U.P.** v. **Gobardhan La**l - (2004) 11 S.C.C 402, which extracted herein below:

> "Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities

> for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

10. Sri.Achutha Kurup, learned senior counsel appearing for the Writ Petitioner would contend that the order Ext.P3 in this case is vitiated by malafides and that the order was issued only for accommodating the fourth respondent at Kollam. He also contends that the fourth respondent is the General Secretary of the Officiers Association and that undue interest has been shown to accommodate him at a place of his convenience.

11. From the law laid down by the Supreme Court, it is evident that this Court can interfere with an order of transfer, if

malafide is proved or it is against any statutory provisions. As regards the plea of malafides is concerned, there is no specific plea in the petition. That apart, I cannot take cognizance of the plea of malafides for the reason that the Commissioner of Excise against whom malafides have been argued has not been impleaded in this case. If plea of malafides is to be taken note of, there should be specific pleadings and the person against whom such allegation is raised has to be impleaded in his personal capacity. The petitioner has not made out a case that any statutory provision has been violated in this case. The case, at best, only makes out a case of infraction of the guidelines, which cannot be a foundation for a Writ Petition.

12. On facts also there is no merit in the case of the petitioner. This is a case where the petitioner has been transferred from Kollam to Alappuzha. The only other contention raised is that the fourth respondent being the Secretary of the Officers Association is given a favoured treatment. In the statement filed by the Government it is stated that he has been posted at the Divisional Office, Kollam for enabling him to acquire Board service and I have no reason to disbelieve this statement.

If that be so, the only fact that he is the General Secretary of an Association, will not render him ineligible to get a posting to acquire such a qualification, which is essential for further promotion.

13. It is settled law that it is for the Government to issue orders of deployment of its staff in the manner it considers best and this Court will not be justified in interfering with such matters. In this case, it is only a transfer from Kollam to Alappuzha. Petitioner is a native of Mavelikkara. Even, according to the counsel for the petitioner, the distance from Mavelikkara to Kollam and from Mavelikkara to Alappuzha is the same. If that be so, by this order, he has not been prejudiced in any manner. Therefore, I do not find any illegality in Ext.P3 order dated 31.7.2007 challenged in W.P.(C) No.24011 of 2007.

14. Coming to the Con.Case © 1198 of 2007, the complaint is that the order passed by this Court has not been complied with by the respondents. Court orders are meant to be obeyed and it is the duty of the person concerned to implement such orders and the order in this case is no exception. I express my displeasure in the conduct of the respondents. However, since I

am disposing of the Writ Petitions itself, I do not propose to proceed any further in this matter.

Writ Petitions and Contempt case are disposed of accordingly.

Antony Dominic,
Judge.

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